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# HOUSE RESEARCH ORGANIZATION

## daily floor report

Monday, May 15, 2017

85th Legislature, Number 71

The House convenes at 2 p.m.

Eight bills are on the daily calendar for second-reading consideration today:

SB 28 by Creighton	Creating the Ship Channel Improvement Revolving Fund	1
SB 303 by Watson	Continuing the Board of Law Examiners	3
SB 286 by Nichols	Modifying board membership for Trinity Valley Community College	8
SB 302 by Watson	Continuing the State Bar of Texas	10
SB 586 by Perry	Requirements for universal service fund disbursements to certain utilities	20
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Dwayne Bohac  
Chairman  
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SUBJECT: Creating the Ship Channel Improvement Revolving Fund

COMMITTEE: Texas Ports, Innovation and Infrastructure, Select — favorable, without amendment

VOTE: 9 ayes — Deshotel, Paul, Faircloth, Goldman, Morrison, Ortega, Phelan, Roberts, J. Rodriguez

0 nays

2 absent — T. King, Oliveira

SENATE VOTE: On final passage, March 30 — 31-0

WITNESSES: *On House companion bill, HB 4021:*  
For — Mike Wilson, Port Freeport; Albert Shannon, Port of Galveston; Keith Strama, Sabine Neches Navigation District; Phyllis Saathoff, Texas Ports Association; (*Registered, but did not testify*: Sally Bakko, City of Galveston; Daniel Womack, Dow Chemical; Ron Lewis, Port of Beaumont; Hugo Berlanga and Nelda Olivo, Port of Corpus Christi; Larry Kelley, Port of Port Arthur; Miranda Goodsheller, Texas Association of Business; Scott Stewart, Texas Chemical Council)

Against — None

On — (*Registered, but did not testify*: Dan Harmon, Texas Department of Transportation)

DIGEST: SB 28 would create the Ship Channel Improvement Revolving Fund as an account in the general revenue fund, administered by the Texas Transportation Commission.

The bill would require the Texas Transportation Commission to establish a revolving loan program to use money from the fund to finance qualified projects for navigation districts, which would have to:

- deepen or widen a ship channel;

- be authorized by the United States Congress; and
- meet other standards provided by commission rule.

Money credited to the fund would include gifts, grants, donations, money appropriated to the commission for certain purposes, loan repayments, and interest earned. Financial transactions of the fund would be subject to state audit, and money could be appropriated from the fund only to finance qualified projects. A maintenance dredging project would not qualify as a project under this bill.

The bill also would add two members to the Port Authority Advisory Committee, increasing the total number to nine. One member would be appointed by the lieutenant governor and one would be appointed by the House speaker.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

**SUPPORTERS  
SAY:**

SB 28 would create the Ship Channel Improvement Revolving Fund to finance qualified Texas port projects to improve depth and infrastructure. Improved ports are necessary for Texas to compete with neighboring state ports and could help boost the state's manufacturing industry.

**OPPONENTS  
SAY:**

No apparent opposition.

**NOTES:**

According to the Legislative Budget Board's fiscal note, the fiscal implications of this bill are indeterminate, but could be significant at the time of implementation. Authorized projects require a non-federal sponsor to share the cost. Estimates of the non-federal share for projects in Texas authorized by the federal Water Resources Reform and Development Act of 2014 range from \$118.3 million to \$365.9 million.

A companion bill, HB 4021 by Deshotel, was placed on the House General State Calendar for May 9.

**SUBJECT:** Continuing the Board of Law Examiners

**COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment

**VOTE:** 8 ayes — Smithee, Farrar, Gutierrez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

1 absent — Hernandez

**SENATE VOTE:** On final passage, April 4 — 30-1 (Hall)

**WITNESSES:** *On House companion bill, HB 2103:*  
For — Rich Robins, TexasBarSunset.com; (*Registering, but not testifying:* Steve Bresnen, Texas Family Law Foundation; Gloria Leal, Mexican American Bar Association of Texas)

Against — None

On — Susan Henricks, Board of Law Examiners; Bob Bennett; (*Registering, but not testifying:* Lori Adelman and Nahdiah Hoang, Board of Law Examiners; Kathryn Hricik, Sunset Commission)

**BACKGROUND:** The Board of Law Examiners (BLE) is a judicial agency created to qualify applicants for admission to the State Bar of Texas under rules governing attorney licensure promulgated by the Texas Supreme Court, which is the licensing entity.

**Functions.** The BLE has three main tasks:

- reviewing the qualifications of applicants;
- evaluating the character and fitness to practice law of applicants;  
and
- administering the Texas Bar Exam.

**Board.** The BLE's board members are nine attorneys appointed by the

Texas Supreme Court to serve staggered six-year terms.

**Funding.** The BLE's primary source of revenue is from the fees it collects from applications, investigations, and examinations. The agency receives no state appropriations. In fiscal 2015, the board collected about \$3.4 million in fee revenue and investment and interest income and spent about \$3.3 million.

**Staffing.** In fiscal 2015, the board employed 18 people, all of whom were located in Austin.

The BLE would be discontinued on September 1, 2017, if not continued in statute.

DIGEST: SB 303 would continue the Board of Law examiners (BLE) until September 1, 2029, and would make changes to requirements for applicants to the state bar as well as those for BLE board members.

**Applicant requirements.** The bill would remove a provision allowing the BLE to require applicants who may have a chemical dependency to submit to a treatment facility for evaluation. Instead, the BLE could require the applicant to be evaluated by a licensed mental health professional designated by the board.

SB 303 would remove a provision of current law requiring applicants for the state bar examination to attest that they are not mentally ill. The bill would require applications for the exam to include a statement, rather than a verified affidavit, certifying certain information.

**BLE guidelines.** The bill would require the BLE to develop specific licensing guidelines for:

- determining the moral character and fitness of license applicants;
- overseeing probationary license holders; and
- granting waiver requests.

The board would develop guidelines based on past decisions and any other criteria it considered necessary.

**Deadlines.** SB 303 would remove certain statutory application deadlines and instead would provide for deadlines based on rules adopted by the Texas Supreme Court. The Supreme Court would have to adopt rules setting the deadlines and establishing certain application fees as soon as practicable after the bill's effective date.

**Board member requirements.** The bill would revise the required training program for board members. The program would have to include information about:

- the law governing board operations;
- the functions, rules, and budget of the board;
- the results of the most recent audit;
- laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and
- other laws applicable to members of a state policymaking body performing their duties.

The executive director of the BLE would be required to create a training manual that would include the information from the training program to be distributed to each member annually. The members would have to sign a statement acknowledging receipt. Board members appointed before September 1, 2017, who had not completed the additional training required in the bill would not be allowed to vote, deliberate, or be counted as a member in attendance at a meeting of the board after December 1, 2017, until they had completed the additional training.

SB 303 also would change the expiration date of board member terms from August 31 to May 31 of odd-numbered years.

Subject to Supreme Court rules, the BLE would be authorized to delegate routine decisions to the executive director of the board, including waiver requests.

**Effective date.** The bill would take effect September 1, 2017, and would apply only to applications filed on or after that date.

**SUPPORTERS  
SAY:**

SB 303 appropriately would continue the Board of Law Examiners (BLE) for 12 years. Despite some administrative issues, the BLE's mission remains important to ensuring Texas attorneys are well qualified to protect the people of Texas.

While the State Bar of Texas performs a similar function for currently licensed attorneys, there is no apparent benefit to consolidating the two entities. Texas is one of many states that maintains two separate agencies for licensing and enforcement.

**Applicant requirements.** The bill would update some anachronistic practices and requirements. Requiring applicants to affirm that they are not mentally ill does comport with modern medical views and may violate the Americans with Disabilities Act, subjecting the state to expensive lawsuits. Qualifications should pertain to applicants' conduct relating to their fitness to practice law, not a condition or diagnosis.

In addition, there is no need to require a notarized verification of certain information, as the application already is sworn to, making intentional misstatements subject to prosecution for perjury. The notary requirement is an additional burden for applicants that adds no value for the reviewers or the public.

The provision of the bill allowing the BLE to require applicants with a potential chemical dependency to submit to an evaluation by a licensed mental health professional would be less onerous than current law, which allows the agency to require an applicant to submit to a treatment facility for evaluation.

**BLE guidelines.** SB 303 would add clarity for applicants and increase confidence in the fairness of the BLE by requiring it to develop licensing guidelines. The BLE currently does not have specific guidelines for how it makes character and fitness decisions. This vagueness can cause uncertainty and anxiety among applications and may lead to inconsistent and unfair decisions.

**Deadlines.** Currently, there are filing deadlines in both statute and rules, creating additional confusion and inefficiency for the BLE and applicants.

One source for deadlines would be easier to track and would give the BLE and the Texas Supreme Court flexibility to adapt to changing circumstances.

**Board member requirements.** While the Supreme Court has authorized the BLE to delegate responsibilities, the agency has not fully implemented that authority, and the board members still take on too many routine tasks, which consumes time that could be spent making final application decisions. The bill would allow the executive director to handle waiver requests and other routine decisions without having to wait for the full board to meet.

OPPONENTS  
SAY:

SB 303 could force applicants to subject themselves to a mental health evaluation before they could be licensed if the BLE was concerned about chemical dependency. While substance abuse issues should create reservations about an applicant, the authority to require such evaluations could be undertaken without sufficient guidance or control.

NOTES:

A companion bill, HB 2103 by S. Thompson, was considered in a public hearing of the House Committee on Judiciary and Civil Jurisprudence on March 21 and left pending.



SUBJECT: Modifying board membership for Trinity Valley Community College

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 8 ayes — Lozano, Raney, Alonzo, Alvarado, Clardy, Howard, Morrison,  
Turner

0 nays

1 absent — Button

SENATE VOTE: On final passage, March 22 — 29-0

WITNESSES: No public hearing

DIGEST: SB 286 would authorize the governing board of the Trinity Valley  
Community College District by order or resolution to increase the number  
of governing board members to 11.

The order or resolution would have to create transition terms of office to conform with elections being held in even-numbered years with staggered six-year terms. Initial board members would be required to draw lots to determine their terms, with five members serving two-year terms, three members serving four-year terms, and three members serving six-year terms.

The bill would take effect September 1, 2017.

SUPPORTERS  
SAY: SB 286 would allow the governing board of the Trinity Valley  
Community College (TVCC) District to increase its membership from  
nine to 11 members. This would allow representation for new school  
districts that could join TVCC's taxing district through an annexation  
election. It could encourage independent school districts to join the TVCC  
community, reduce in-district tuition and fees for those students, and  
provide more opportunities for high school students to enroll in dual-  
credit courses.

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House Research Organization  
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OPPONENTS  
SAY: No apparent opposition.

NOTES: A companion bill, HB 1062 by Gooden, was approved by the House on April 5.

SUBJECT: Continuing the State Bar of Texas

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Smithee, Farrar, Gutierrez, Hernandez, Murr, Neave, Rinaldi,  
Schofield

1 nay — Laubenberg

SENATE VOTE: On final passage, April 4 — 31 - 0

WITNESSES: *On House companion, HB 2102:*

For — Gloria Leal, Mexican-American Bar Association of Texas; Frank Stevenson, State Bar of Texas; Rich Robins, Texasbarsunset.com; John L. McCraw, Texas Trial Lawyers Association; Jim Parsons; (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas; George Christian, Texas Association of Defense Counsel; Steve Brensnen, Texas Family Law Foundation; Samuel Houston, Texas Young Lawyers Association; Guy Harrison)

Against — Bobie Townsend, San Jacinto Constitutional Study Group; Bob Bennett; Eddie Craig; Ken Magnuson; Bobie Townsend (*Registered, but did not testify*: Lee Parsley, Texans for Lawsuit Reform; Michael Dorsett)

On — Michelle Hunter, State Bar of Texas; Katharine Teleki, Sunset Advisory Commission; Karen Burgess; Joe. K. Longley; Alan Schoolcraft; (*Registered, but did not testify*: Linda Acevedo, State Bar of Texas)

BACKGROUND: The State Bar of Texas is a judicial agency that operates under the authority and rules of the State Bar Act (Government Code, ch. 81) and the administration of the Texas Supreme Court. Legislative oversight of the state bar occurs through the Sunset review process. The state bar's last Sunset review was in 2003.

**Functions.** The state bar regulates attorneys and acts as a professional

association. As a mandatory, unified bar organization, all licensed attorneys must be members to practice law in Texas. The state bar's key activities include enforcing the legal profession's rules of conduct and administering the attorney discipline system, providing continuing legal education, and encouraging equal access to and understanding of the legal system.

**Governing structure.** A 60-member board of directors oversees the state bar's executive director and operations. Among the 46 voting members are 30 attorneys elected from the 17 local state bar districts, six public, non-attorney members appointed by the Supreme Court, and four minority members appointed by the state bar president.

To carry out its mission, the state bar uses board committees, standing advisory committees, and sections categorized by legal practice or interest. The Commission for Lawyer Discipline is a standing committee that oversees the attorney discipline system. The chief disciplinary counsel directs the enforcement of the system and reports to the commission, not the state bar. The commission is made up of six attorneys appointed by the state bar president and six public, non-attorney members appointed by the Supreme Court.

**Funding.** The state bar does not receive legislative appropriations and is funded primarily through membership dues and fees associated with continuing education courses. The State Bar Act requires the state bar to present its annual budget at a public hearing, after which it is approved by the Supreme Court. In fiscal 2014-15, the state bar collected around \$48.1 million in revenue and spent about \$38.4 million. The state bar maintains a reserve fund, which at the end of fiscal 2015 had a balance of about \$9.1 million.

**Staffing.** The state bar employed 265 staff in fiscal 2014-15.

The State Bar of Texas would be discontinued September 1, 2017, if not continued in statute.

DIGEST: SB 302 would continue the State Bar of Texas until September 1, 2029, and amend several processes related to its functions.

**Committee on disciplinary rules and referenda.** The bill would create the Committee on Disciplinary Rules and Referenda to regularly review the adequacy of the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure and oversee the initial process for proposing a disciplinary rule. It would have nine members, including attorneys and non-attorney public members appointed by the president of the state bar and the Supreme Court. The initial members of the committee would be appointed by January 1, 2018.

**Rulemaking process.** The bill would amend the state bar's rulemaking process and repeal provisions related to it. The Committee on Disciplinary Rules and Referenda could initiate the process for proposing a disciplinary rule either on its own or upon a request by the Commission for Lawyer Discipline, the Legislature, a petition signed by at least 20,000 people, of which at least 51 percent must be Texas residents, or those allowed under current law.

The committee would have 60 days to take action on a request. A proposed rule would be withdrawn if it was not published in the Texas Register and the Texas Bar Journal within six months after the process was initiated. If the proposed rule was appropriately published, a 30-day public comment period would be initiated, and the committee would have to hold a public hearing on the proposed rule if requested.

After the public comment period, a proposed rule could not be adopted unless approved by the committee, the board of directors, a majority of state bar members in a referendum, and the Supreme Court within certain time limits established in the bill. The Supreme Court could grant a petition to extend any time limit for no more than 90 days. If a proposed rule was defeated, the rulemaking process could be reinitiated.

Throughout the rulemaking process any deliberations would have to be made open to the public. The committee, board, and court also would have to use technological solutions to promote financial efficiency and comments from interested persons.

**Attorney discipline system.** Investigatory and disciplinary hearings could

be held by teleconference. During an investigation of a grievance and with approval of the presiding officer of the appropriate district grievance committee, the chief disciplinary counsel could issue a subpoena that related directly to a specific allegation of attorney misconduct.

The counsel would be required to develop a process to identify a complaint that was appropriate for a settlement attempt or an investigatory hearing before a trial was requested or the complaint was placed on a hearing docket. A settlement could be authorized at any time during the disciplinary process.

The chief disciplinary counsel would have to create and maintain a system to track grievances filed and disciplinary decisions issued. The tracking system would have to collect certain information listed in the bill, including information necessary to track disciplinary trends over time and to evaluate sanction patterns within the disciplinary districts. The counsel would periodically evaluate and report information gathered in the tracking system to the Commission for Lawyer Discipline and district grievance committee members. Information associated with rule violations or instances of ethical misconduct and the disciplinary action taken would be posted on the state bar's website.

The chief disciplinary counsel would regularly search a data bank maintained by the American Bar Association to identify a member of the state bar who was disciplined in another state. The counsel also would develop a procedure for an attorney to self-report any criminal offense committed and any disciplinary action taken by another state's bar.

**Sanction guidelines.** The Supreme Court would be required to adopt sanction guidelines to associate a specific rule violation or ethical misconduct with a range of appropriate sanctions, provide aggravating and mitigating factors that justify deviating from the established sanctions, and provide consistency between complaints heard by a district grievance committee and complaints heard by a district court. The chief disciplinary counsel would be required to propose the guidelines and ensure that interested parties were provided an opportunity to comment.

**Online attorney profiles.** The online profile of each licensed attorney

would have to include all public disciplinary sanctions issued by the state bar with a link to the full text of any disciplinary judgment entered by a district grievance committee or district judge and any sanctions issued by an entity in another state, not just those issued within the previous 10 years.

**Ombudsman for attorney discipline system.** An ombudsman for the attorney discipline system would be selected by and report directly to the Supreme Court, making the position independent of the state bar, the board of directors, the Commission for Lawyer Discipline, and the chief disciplinary counsel.

The ombudsman would review grievances to determine whether the state bar followed the proper procedures, receive and investigate complaints about the system, and answer questions from and assist the public in submitting a lawyer grievance. The ombudsman could not draft a complaint or act as an advocate for a member of the public, reverse or modify a finding or judgment in any disciplinary proceeding, or intervene in any disciplinary matter. The ombudsman would, at least annually, make recommendations to the board of directors and the Supreme Court for improvements to the attorney discipline system.

**Dispute resolution.** The established voluntary mediation and dispute resolution procedure only would be used to resolve minor grievances referred by the chief disciplinary counsel. The state bar would have to assist the Supreme Court with modifications to the Texas Rules of Disciplinary Procedure to comply with this change, including amending the time for processing grievances and establishing a time limit for resolution through the system or referral to the formal grievance process.

**Fingerprint-based criminal history record check.** The state bar would be required to conduct a fingerprint-based criminal history record check of each member, who would have to submit a complete and legible set of fingerprints to the state bar or the Department of Public Safety (DPS) to obtain criminal history record information from the department and the FBI. A member would not have to submit fingerprints if he or she had submitted them to the Board of Law Examiners and the board made the information accessible to the state bar, or if the member previously

submitted fingerprints to the state bar or DPS.

The chief disciplinary counsel, instead of the general counsel of the state bar, would be entitled to obtain criminal history record information from DPS on any person licensed by the state bar, whether or not involved in an investigation.

The state bar would have to obtain criminal history record information on each member by September 1, 2019, and could administratively suspend the license of a member who failed to assist the efforts. The bill would repeal a provision relating to the destruction of criminal history record information, allowing the state bar to retain it.

**Membership fees.** The Supreme Court would have to carry out its duty to set membership and any other fees during the state bar's annual budget process. Any change in fees would have to be clearly described and included in the state bar's proposed budget and considered by the court in budget deliberations. A fee increase could not take effect unless a majority of state bar members approved the increase in a referendum. The board of directors could increase a fee without a referendum if the fee increase was not more than 10 percent of the previous fee amount and at least six years had passed since the preceding fee increase.

**Training program for board members.** The bill would add additional subjects to the training program for members of the board of directors, as listed in the bill. The executive director would be required to distribute a training manual annually, and each member of the board would have to sign and submit a statement acknowledging receipt of the manual.

Members of the board who completed the training program prior to the effective date of the bill would have to complete additional training on the added subjects and could not vote, deliberate, or be counted in attendance at a meeting held on or after December 1, 2017, until completed.

**Implementation.** The Supreme Court would have to adopt rules necessary to comply with the bill by March 1, 2018. The chief disciplinary counsel and the state bar would develop and propose rules as necessary to comply with the bill.



**Effective date.** The bill would take effect September 1, 2017.

**SUPPORTERS  
SAY:**

SB 302 would continue the State Bar of Texas for 12 years, signifying that Texas has a continuing interest in regulating attorneys and promoting legal professionalism. It is important to maintain the Legislature's oversight through the Sunset review process because historically most improvements made to the attorney discipline system have resulted from Sunset recommendations. The bill would make necessary changes to processes essential to the state bar's mission to make the state more efficient and transparent, improve its rulemaking process, and strengthen its disciplinary process.

**Committee on disciplinary rules and referenda.** State bar members are the best informed resource regarding the complexities of the law. Therefore, appointing attorneys to the Committee on Disciplinary Rules and Referenda would ensure that necessary regulatory measures were implemented to guide attorneys and protect the public.

**Rulemaking process.** Concerns have been raised that the state bar's current rulemaking process has not permitted any meaningful updates in two decades and is ill-suited to the rapidly evolving practice of law. Further, it lacks transparency, accountability, and public participation, which impact the state bar's duty to protect the public and provide sound, ethical guidance to lawyers. The bill would improve the rulemaking process and ensure that all interested stakeholders, including the general public, had a clear role in the development of rules. The public would have avenues for participation through rule proposals, a required public comment period, and public hearings.

Although some have noted that the referendum process is inefficient, by preserving the voting right of attorneys to approve all disciplinary rule changes, the bill would maintain judicial review over rulemaking. Judicial review is seen as the model by which other occupational licensing agencies balance authority and interests.

**Attorney discipline system.** The bill would ensure that the chief disciplinary counsel had the authority necessary to conduct effective

investigations and resolve cases earlier to avoid litigation when appropriate. Currently, the chief disciplinary counsel's subpoena authority is limited to the litigation phase of the disciplinary process, resulting in staff either dismissing complaints that may be valid or moving forward on complaints that may prove baseless. Aligning with the American Bar Association's nationwide best practice for attorney discipline agencies, the chief disciplinary counsel would have investigatory subpoena power, which would ensure timely access to information needed to properly investigate grievances.

**Fingerprint-based criminal history record check.** Requiring fingerprint-based criminal history record checks on all of its members would allow the state bar to more effectively monitor relevant criminal activity warranting disciplinary action. To alleviate administrative burden, the bill would implement a two-year phase-in period for current attorneys and information sharing with the Board of Law Examiners. Further, occupational licensing agencies for most other professions already continually monitor their licensees so the bill simply would align the state bar with identified best practices for occupational licensing agencies.

OPPONENTS  
SAY:

**Committee on disciplinary rules and referenda.** If the purpose of the disciplinary system is to protect the public, the state bar president should not be tasked with appointing members to the Committee on Disciplinary Rules and Referenda created under the bill, as this would signal to the public that lawyers are self-regulating. This appointment process also could result in the placement of biased selections on the committee.

Criminal lawyers should be considered for appointment to the committee as they historically have been excluded from such discussions. Criminal lawyers have unique needs and important perspectives on many ethical issues.

**Rulemaking process.** The bill would not go far enough to fix the state bar's rulemaking process and would preserve the untenable conflict between the state bar's mission of protecting the public and self-regulation of attorneys. For interested parties of the public to initiate the process for proposing a disciplinary rule, a petition with at least 20,000 signatures would be required.

The referendum procedure for rulemaking is expensive and lethargic and should be replaced with a process overseen by the Supreme Court. The court's rulemaking process, with appropriate statutory guidance, would be more efficient and provide the public with greater confidence in the integrity of the profession's self-regulation.

In addition to publication requirements in the Texas Register and the Texas Bar Journal, the bill should include means for state bar members to receive electronic communication advising them of proposed disciplinary changes. In the current technological climate, not all members read the printed publications.

**Attorney discipline system.** The powers of the disciplinary process with regard to investigative subpoena power should not be expanded without judicial oversight.

**Fingerprint-based criminal history record check.** SB 302 would add new, onerous requirements to the state bar in the form of mandatory fingerprinting and background checks. This is unnecessary, especially because fingerprints are nearing the end of utility. However, if the state bar were going to require this, there should be a way to counterbalance new government mandates on licensees by reducing other licensure requirements.

The bill would allow the state bar to keep these fingerprint-based criminal history records on file forever, which could amount to a government monitoring system imposed through occupational licensing. The bill also would not provide for any constraints on the state bar's use of this information, which could result in it being used unfairly in a punitive manner.

In any case, the implementation timeline for the fingerprint-based criminal history record check should be long enough to ensure that the state bar could fully comply. The phase-in period proposed by the bill could be problematic for attorneys licensed in Texas but residing out of state, those in rural areas, or attorneys who were active duty members of the armed forces.

OTHER  
OPPONENTS  
SAY:

Some have raised concerns that the State Bar of Texas violates the Texas Constitution and thus should not be continued in statute.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would generate an estimated revenue gain of \$1.7 million to the Department of Public Safety in fiscal 2018-19 from fingerprint-based criminal background check fees.

The companion bill, HB 2102 by S. Thompson, was left pending after a public hearing in the House Committee on Judiciary and Civil Jurisprudence on March 21.

SUBJECT: Requirements for universal service fund disbursements to certain utilities

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Cook, Giddings, Craddick, Geren, Guillen, K. King, Kuempel,  
Meyer, Oliveira

0 nays

4 absent — Farrar, Paddie, E. Rodriguez, Smithee

SENATE VOTE: On final passage, April 20 — 28-3 (Burton, Huffines, V. Taylor)

WITNESSES: *On House companion bill, HB 2659:*

For — (*Registered, but did not testify*: Kelly Curbow, AT&T; Shayne Woodard, Big Bend Telephone Company, Brazoria Telephone; Don McBeath, Texas Organization of Rural and Community Hospitals; Daniel Gibson and Weldon Gray, Texas Statewide Telephone Cooperative, Inc.; Rick Hardcastle, Santa Rosa Telephone; Don Richards, TSTSI; John Hubbard, Lyn Kamerman and Ian Randolph, Texas Telephone Association)

Against — Bill Peacock, Texas Public Policy Foundation (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings)

On — Thomas Ratliff, Dialtone Services; Pam Whittington, Public Utility Commission of Texas; (*Registered, but did not testify*: Charles Land, TEXALTEL)

BACKGROUND: In 1987, the 70th Legislature established the Texas Universal Service Fund to help local telephone companies in high-cost rural areas provide telephone service at reasonable rates. One of the two plans used to assist local phone companies is the Small and Rural Incumbent Local Exchange Company Universal Service Plan. Certain provisions of the Small and Rural Incumbent Local Exchange Company Service Plan are set to expire September 1, 2017.

**DIGEST:** SB 586 would require the Public Utility Commission (PUC) to determine the amount of monetary support given to specific phone companies serving rural areas and adjust the amount of monetary support under certain conditions. The bill also would require PUC to review specific provisions of the Universal Service Plan and report findings to the Legislature in 2022.

**Determining and disbursing support.** The bill would require PUC, upon request by certain small providers, to determine and disburse support to a small provider in fixed monthly amounts based on an annualized support amount PUC determined to be sufficient to permit the small provider a reasonable return. A small provider would continue to receive the same level of support received on the date of the request until PUC made a determination or an adjustment. The bill would define a "small provider" as an incumbent local telephone company or cooperative that served 31,000 or fewer access lines in the state, or the successor to that company or cooperative.

**Determining support amounts.** Before January 1, 2018, PUC would be required to initiate rulemaking to develop and implement a mechanism to determine the annualized support amount to be disbursed to small providers. The mechanism would have to meet several requirements provided by the bill, including that small providers file an annual report and that PUC provide a procedure to determine whether expenses reported by a small provider were reasonable and necessary. The annual report would be confidential and not subject to state public information requirements.

The bill would require a proceeding to determine whether a small provider's rate of return was reasonable and if monetary support levels should be adjusted.

A small provider whose return was not considered reasonable could file an application that was eligible for administrative review or informal disposition to adjust support or rates to a level that brought the small provider's rate of return into a reasonable range. A small provider's support level could not be set at more than 140 percent of the annualized support amount the provider received in the previous year before the date

of adjustment.

A rate adjustment could not adversely affect universal service. Except for good cause, a small provider that filed an application for adjustment could not file another application for adjustment within three years after the date the most recent application was initiated.

PUC could initiate a proceeding to review the small provider's support level and regulated revenues and, after notice and an opportunity for a hearing, adjust the provider's level of support or rates. Except for good cause, the PUC could not initiate a subsequent adjustment proceeding within three years after the date the most recent application was initiated.

A small provider eligible to have support determined and distributed would be required to receive the same level of support it was receiving on August 31, 2017, until the earlier of:

- the date on which PUC made a determination or adjustment; or
- the 61st day after the date PUC adopted the mechanism to determine annualized support amounts.

The bill would not limit PUC's authority to initiate a review of a small provider under another provision of the Universal Service Fund Program. In a proceeding for a small provider, PUC could recalculate the annualized support amount to be disbursed to the small provider and recalculate the annualized support amount to be used as the basis for adjustment in any subsequent proceeding.

**Program review.** On or after January 1, 2022, and before July 1, 2022, PUC would be required to review and evaluate the provisions of this bill and whether they should be continued. After conducting a review and before September 1, 2022, PUC would be required to submit a report to the Legislature with certain information required by the bill, including the efficiency and frequency of adjustment proceedings, and the effects of changes in technology on regulated revenue and support needs. The provisions of this bill and any monthly amounts approved by PUC would expire on September 1, 2023.

**Effective date.** The bill would take effect September 1, 2017.

**SUPPORTERS  
SAY:**

SB 586 would continue a vital program needed to provide phone service to rural areas where it would not otherwise be feasible for phone companies to do business. Without the bill, many rural residents could lose their phone service or see rates increase significantly, which would be especially problematic for residents without internet or cell service during an emergency.

The bill would require a review of the program in 2022, including a review of the effect of technology on regulated revenue and support needs. There currently is a demonstrated need for the program, but if technology advanced to the point where this program was no longer needed, it would expire in 2023.

**OPPONENTS  
SAY:**

SB 586 would increase government subsidies to certain telephone companies, even though the cost of providing phone services has gone down in the past several years. Recent technological improvements have provided more access to phone services while reducing prices, making certain provisions within the Universal Service Fund unnecessary. These provisions of the fund should be allowed to expire instead of being extended and expanded.

**NOTES:**

A companion bill, HB 2659 by Geren, was left pending following a public hearing in the House State Affairs Committee on April 12.



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SUBJECT: Revising the composition of the State Bar of Texas board of directors

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr

2 nays — Rinaldi, Schofield

1 absent — Neave

SENATE VOTE: On final passage, April 17 — 30 - 1 (Hall), on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 3199:*

For — Gloria Leal, Mexican-American Bar Association of Texas; Frank Stevenson, State Bar of Texas; (*Registered, but did not testify*: Laura Sharp)

Against — None

On — (*Registered, but did not testify*: John Sirman, State Bar of Texas)

BACKGROUND: Government Code, sec. 81.020, governs the composition of the State Bar of Texas Board of Directors. Included among the 46 voting members are four minority member directors appointed by the president of the state bar. The president is required to attempt to appoint members of different minority groups: female; African-American; Hispanic-American; Native American; or Asian-American.

DIGEST: SB 416 would amend the composition of the State Bar of Texas Board of Directors by replacing the four minority member directors with four outreach directors. The president of the state bar would be required to appoint outreach directors who demonstrated the sensitivity and knowledge gained from experience in the legal profession and community necessary to ensure the board represented the interests of attorneys from the varied backgrounds that composed the membership of the state bar, including members of historically underrepresented groups.

The bill would repeal the definition of "minority member" and would make certain conforming changes.

A minority member director serving on the effective date would continue to serve his or her term, and the president would appoint an outreach director as required by the bill on the expiration of the term.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

**SUPPORTERS  
SAY:**

SB 416 would address concerns that the minority member requirements for the state bar's board of directors are unconstitutional. Recently, a lawsuit was filed alleging that reserving four board positions for minorities violates the equal protection clause of the U.S. Constitution. By replacing the current minority director members with outreach directors who met certain criteria, the bill would alleviate any constitutional concerns while still ensuring that the state bar remained representative of its full membership.

Although the outreach directors would not be limited by race, ethnicity, or gender, the state bar president would be required to appoint directors from the varied backgrounds that compose the membership of the state bar, including members of historically underrepresented groups. By leaving "historically underrepresented groups" undefined, the bill would allow the state bar to identify any group that has not received adequate representation, including those based on race, ethnicity, gender, geographic area, and practice area, and move forward on other aspects of diversity to further inclusion.

SB 416 simply would be a way to preserve efforts to increase the board's diversity regardless of how the issue is resolved by the court.

**OPPONENTS  
SAY:**

Although the selection criteria for the outreach directors proposed by SB 416 would be similar to the minority member directors, removing the defined gender and ethnic requirements could make the state bar's governing board less reflective of the diverse attorneys it regulates. Such

an action should be taken only if the court finds the current minority member requirements to be unconstitutional. The current minority member requirement has been essential to maintaining diversity on the board.

OTHER  
OPPONENTS  
SAY:

A pending lawsuit would likely result in the current system being found unconstitutional. The bill does not take the necessary action to alleviate constitutional concerns as it would simply replace the current minority member requirements with a similar outreach director.

NOTES:

The companion bill, HB 3199 by Smithee, was left pending following a public hearing in the House Committee on Judiciary and Civil Jurisprudence on May 2.

SUBJECT: Allowing certain military dependents to enroll full-time in TxVSN

COMMITTEE: Public Education — committee substitute recommended

VOTE: 8 ayes — Huberty, Bernal, Bohac, Deshotel, Gooden, Koop, Meyer,  
VanDeaver

0 nays

3 absent — Allen, Dutton, K. King

SENATE VOTE: On final passage, April 19 — 31-0

WITNESSES: *On House companion bill, HB 539:*

For — Marie Hossfeld, Texas Virtual Academy; Juliet Jones, Shea Mackin, and Rosetta Slamcik, Publicschooloptions.org; Sarah Robinson and Adriana Steinhaus, K12; (*Registered, but did not testify*): Ellen Arnold, Texas PTA; Amy Beneski, Texas Association of School Administrators; Addie Gomez, Texans for Quality Public Charter Schools; Miranda Goodsheller, Texas Association of Business; Barry Haenisch, Texas Association of Community Schools; Amanda List, ResponsiveEd; Marlene Lobberecht, League of Women Voters of Texas; Matt Matthews, Connections Education; Mike Meroney, Huntsman Corporation, BASF Corporation, Texas Workforce Coalition; Shannon Noble, Texas Air Conditioning Contractors Association; Stephanie Simpson, Texas Association of Manufacturers; Annie Spilman, National Federation of Independent Business/Texas; Scott Stewart, Texas Chemical Council; Michael White, Texas Construction Association)

Against — None

On — Kara Belew and Monica Martinez, Texas Education Agency

BACKGROUND: The Texas Education Agency administers the Texas Virtual School Network, which provides students and schools with access to quality online courses and instructors.

Education Code, sec. 30A.002(b) states that students are eligible to enroll full time in courses provided through the virtual school network only if the student was enrolled in a Texas public school in the preceding school year or has been placed in substitute care, regardless of whether the student was enrolled in a Texas public school in the preceding school year.

**DIGEST:** SB 587 would make eligible to enroll full-time in courses provided through the Texas Virtual School Network a student who had been enrolled in a publicly funded school outside of Texas in the preceding year and was the dependent of a U.S. military member deployed or transferred to Texas.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply beginning with the 2017-18 school year.

**NOTES:** According to the Legislative Budget Board's fiscal note, SB 587 would cost the Foundation School Program an additional \$665,463 for fiscal 2018-19.

The House approved SB 587, considered in lieu of a companion bill, HB 539 by VanDeaver, on May 12.

SUBJECT: Eliminating certain formula funding and dropped course restrictions

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 6 ayes — Lozano, Raney, Alonzo, Alvarado, Button, Morrison  
0 nays  
3 absent — Clardy, Howard, Turner

SENATE VOTE: On final passage, (May 4) — 28-3 (Burton, Creighton, Schwertner)

WITNESSES: *On House companion bill, HB 654:*  
For — (*Registered, but did not testify*: Yannis Banks, Texas NAACP, Texas; Annie Spilman, National Federation of Independent Business/Texas; Miranda Goodsheller, Texas Association of Business; Stephanie Simpson, Texas Association of Manufacturers; Justin Yancy, Texas Business Leadership Council; Michael White, Texas Construction Association; Mike Meroney, Texas Workforce Coalition, BASF Corp., and Huntsman Corporation)  
  
Against — None  
  
On — (*Registered, but did not testify*: Julie Eklund, Texas Higher Education Coordinating Board)

BACKGROUND: Under Education Code, sec. 51.907, an institution of higher education may not allow a student to drop more than six courses, but the institution may adopt a policy that further limits the number of courses a student may drop.  
  
Under sec. 54.014 an institution of higher education may charge a higher rate of tuition to a student who takes 30 or more credits beyond the number required to complete a degree program.

DIGEST: CSSB 1782 would require Texas Higher Education Coordinating Board to adopt rules to require institutions of higher education to allow students

who were re-enrolling at an institution after a break of at least 24 months, and who had completed at least 50 semester hours prior to that break, to drop one additional course beyond the current limit in state law or a smaller limit set by an institution's policy. An institution of higher education could not charge a higher tuition rate for courses taken by a re-enrolling student who had met these requirements.

The coordinating board also would be required to include in its recommendations for formula funding appropriations funding for the first 15 additional semester credit hours earned by a student reenrolling under the conditions set by the bill.

The bill would take immediate effect if finally passed by a two-thirds vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply to the 2017 fall semester and to funding recommendations for fiscal 2020-21.

**SUPPORTERS  
SAY:**

CSSB 1782 would encourage college students who had dropped a number of courses or exceeded the number of courses required for their degree plans to return to school and finish their degrees without facing increased costs for school as a result of the state's restrictions on formula funding.

The bill would assist students who had to drop out of school for a number of unforeseen reasons, including family obligations, financial burdens, or competing work responsibilities. By changing formula funding restrictions, CSSB 1782 would help these returning students to more easily finish their programs of study, which would support the coordinating board's goal of ensuring that at least 60 percent of Texans ages 25-34 have a certificate or degree by 2030.

**OPPONENTS  
SAY:**

Current restrictions are in place to encourage students to complete their degrees in a timely manner. The bill would limit a student's responsibility for completing degree programs on time and create an exception that benefitted certain students over others.

**NOTES:**

CSSB 1782 differs from the Senate-passed version in that the Senate-passed version would have allowed a student to reenroll after a break of 24 months or more at the same institution or another institution of higher

education. SB 1782 as passed by the Senate also would have applied beginning in the 2018 fall semester.

A companion bill, HB 654 by Clardy, was approved by the House on May 9 on the Local, Consent, and Resolutions calendar.